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No. 92-1316

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

NELSON R. RABY, *et al.*,

Petitioners,

v.

M/V PINE FOREST, *et al.*,

Respondents.

RESPONDENTS' OBJECTION TO MOTION OF PORT MINISTRIES AND THE INTERNATIONAL TRANSPORT WORKERS' FEDERATION FOR LEAVE TO FILE BRIEF AMICUS CURIAE IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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Respondents object to the filing of an amicus brief by the International Transport Workers' Federation ("ITF") and various port ministries in support of plaintiffs' petition for certiorari for the following reasons.

1. The putative *amici curiae* have the same interest as, and are already represented *de facto* by, the plaintiffs in this action.

2. The motion recites no matter – factual or legal – that has not already been brought to the attention of the Court by the petitioners.

3. The tactical, manipulative and deceptive nature of movants' papers disqualify them to act as friends of the Court.

I.
AMICI'S INTERESTS ARE ALREADY REPRESENTED

Neither *amici* nor their counsel requested respondents' consent to the filing of a brief supporting the petition for certiorari. The only request came from Richard J. Dodson, counsel of record for petitioners, who contacted Robert I. Sanders, lead counsel for respondents. Mr. Dodson was thus acting in a representative capacity for these *amici.*

Mr. Dodson has asserted in briefing that he secures most of the cases he prosecutes for seamen from some or all of the ministries listed as *amici* in this case. Plaintiffs/Appellees' Original Brief on the Merits, p. 25, n.8, *Raby v. M/V Pine Forest,* No. 90-35618 (9th Cir.). Deposition testimony in this case shows that his engagement in this very case was obtained through the assistance of *amicus* Tacoma Seamen's Center. Trial Exhibit 38, Deposition of Nelson R. Raby, February 12, 1990. Mr. Dodson has also described himself as an attorney for the ITF. Transcript of Hearing pp. 19-20, February 8, 1990, *Raby v. M/V Pine Forest,* No. CV-90-5038-JET (W.D. Wash.). He has at times represented the Philippine union AMOSUP and the Korean union FKSU, both affiliates of the ITF, in this case and in the related case of *Su v. M/V Southern Aster,* for which certiorari has also been sought from this Court. AMOSUP was a prevailing plaintiff in the trial court in this action, but when its entire judgment was reversed on appeal elected not to pursue review in this Court.

The close, interlocking relationship between Mr. Dodson, the petitioners and *amici* insures that the interests and arguments of all of them have been fully represented in his briefing for the petitioners. In addition, the interests identified by the ministries and the ITF as their interests are essentially the interests of the petitioners themselves. The ministries assert no interest of their own or of any parties or groups other than foreign seamen. Their only interest is as advisers to seamen – people who help them in a foreign port and advise them as to their legal rights. Needless to say, the ITF's role as a union is also representative of seamen. As the Court will see, and as the Ninth Circuit implicitly recognized, it is the ITF that has always been the true party in interest in this case with the Filipino seamen plaintiffs serving as richly rewarded surrogates. *Su v. M/V Southern Aster*, 978 F.2d 462, 465 (9th Cir. 1992).

II.
AMICI PRESENT NO NEW MATTER

The motion describes no new facts – adjudicative or legislative – that *amici* wish to bring to the attention of the Court. Nor does it identify any new legal argument or policy consideration. Rather, its argument merely tracks part of the petition for certiorari.

III.
AMICI SEEK NOT TO ASSIST, BUT TO MANIPULATE THE COURT

Since *amici* have no interests other than interests already represented in the petition and add no new matter to that document, the purpose of their papers can only be tactical and rhetorical – to repeat the arguments already made and create the impression that this is a case

of great importance and that many parties other than the plaintiffs disapprove of the Ninth Circuit's decision. This tactical use of the *amicus* privilege conflicts with its purpose and the role of an *amicus* as a "friend" of the Court.

In addition, the failures of candor reflected in *amici*'s papers disqualifies them as friends of this Court. The allegation that defendants told plaintiffs or any other seamen that they would be blacklisted and never work again if they demanded their lawful wages is false and was supported by no testimony – even of the plaintiffs – or any other evidence. The allegation that the seamen were "cheated" is another misrepresentation repeated frequently by petitioners' briefing in this action, but contradicted by their own testimony and clearly false, as the Ninth Circuit recognizes. *Id.* at 472-73.

CONCLUSION

The motion for leave to file an amicus brief in support of the petition for certiorari should be denied.

Respectfully submitted,

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